IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 16-1080

Polk County No. EQCE077220

City of Des Moines
Plaintiff-Appellee

vs.

Mark Ogden
Defendant-Appellant

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE ROBERT B. HANSON, DISTRICT COURT JUDGE

REPLY BRIEF FOR APPELLANT

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REPLY POINT 1
ROUTING STATEMENT: WHY JUSTICE COMPELS THE SUPREME COURT TO RETAIN THIS CASE

In his Routing Statement in his Appellant's Brief, Mark Ogden stated that "the Appellant believes the Supreme Court should retain this case under Iowa R. App. P. 6.1101(2), because this is a case 'presenting substantial issues of first impression,' 'presenting fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court,' and 'presenting substantial questions of enumerating or changing legal principles.' "

In the Routing Statement of its Appellee's Brief, the City argued that this case should be transferred to the Court of Appeals, because this case "does not raise a fundamental and urgent issue of broad public importance." The City is very anxious to have the Supreme Court view this case as nothing more than a simple example of exercise of the police power to eliminate an unsafe use of some land. This case is much, much more than that.

This case involves judicial resolution of a constitutional conflict that will drastically impact the lives of many of Des Moines' poorest and most vulnerable citizens. Indeed, at issue in this case is the right of residents to continue to live in their 30 homes in a mobile home park that has been

legally grandfathered as a nonconforming use for 77 years. This case involves the attempted abuse of municipal police power by the City of Des Moines to destroy an entire neighborhood of impoverished residents for the simple reason that the City Council considers their homes ugly and wants to replace them with new, higher-class buildings.

The City Council could accomplish such a result through the exercise of eminent domain under its statutory urban renewal power. But this would require the City to pay just compensation, a very expensive matter that the City Council desperately wants to avoid. It would be unconstitutional for the City to terminate the residential community without paying just compensation.

Much has been written about the class issues that exist in our country. Certainly, we are a nation of haves and have-nots. Some of us own vast wealth and resources. Some of us hold positions of political power and influence. Some of us are starving and homeless.

In the Declaration of Independence, our founding fathers enunciated the principles underlying our Constitution: " that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

While these are our foundational principles, we all know that the reality does not match the ideal. As George Orwell stated in *Animal Farm*: "All animals are equal, but some animals are ***more equal*** than others."

As a city, Des Moines shares the basic characteristics of all cities. Des Moines has extremely wealthy and entitled people, and Des Moines has extremely poor and impoverished people, and Des Moines has people of financial conditions extending the continuum between the two extreme conditions of extreme wealth and extreme poverty.

In Des Moines, as everywhere, wealth is power. Poverty is to have no power. People use their power to promote their self-interest and the self-interest of others in their class. In wielding their power, the more affluent and politically equipped members of the City sometimes disregard the rights and interests of the poorer members of the City. This disregard may be unintentional and innocent—or it may be purposeful and willful.

In the Prologue to his classic 1947 book *Invisible Man*, Ralph Ellison likened the plight of poor minorities in this county to that of being invisible in the eyes of the more privileged members who control our society, stating as follows:

> I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids – and I might even be said to

> possess a mind. I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or figments of their imagination – indeed, everything and anything except me.
>
> Nor is my invisibility exactly a matter of a biochemical accident to my epidermis. That invisibility to which I refer occurs because of a peculiar disposition of the eyes of those with whom I come in contact. A matter of the construction of their *inner* eyes, those eyes with which they look through their physical eyes upon reality.

Invisible Man by Ralph Ellison, Second Vintage International Edition, Vintage Books, March 1995, www.vintagebooks.com

The Park owner Mark Ogden and the residents of the Oak Hill Mobile Home Park are each and every one an "invisible man" in the eyes of the Des Moines City Council and the City Attorney. The City Council and the City Attorney would have the Supreme Court mislead into believing that this case is simply about the City compassionate concern to protect the unfortunate Park residents from the hazard of living in unsafe homes. That is nonsense—ludicrous, deplorable nonsense, and the City Council and the City Attorney know it is nonsense.

Under the judicial due process standard, courts regard the actions of a city council as those of a single entity, while disregarding the fact that the city council is made up of a number of real, living and breathing people with

biases and personal opinions. This legal fiction precludes inquiry into the personal motives of individual council members when an official city action is taken. Sometimes city councils purport to justify their actions under a proper officially stated purpose, but under circumstances where the true underlying motivation—the true hidden agenda—involves improper, and even unconstitutional, purposes. The court's refusal to consider a city council's improper hidden agenda can lead to judicial decisions that are fully in accord with judicial due process standards—but which can have an extremely unjust result.

The City has brought this action only against Mark Ogden, the Park owner, and did not name any of the Park resident/owners as a party defendant. In its Appellee's Brief, the City argued that the resident/owners have no legal rights in this case and that "[t]he legal scope of the zoning dispute involves only the City and Mr. Ogden."

The City's only stated premise for filing its Petition was out of concern for the safety of the Park resident/owners. If the City truly was concerned about the safety of the resident/owners, the City , at the very least, would have sought them out individually to testify at the trial as to the conditions in their Park.

The City's stated premise in protecting the safety of the residential neighborhood of the resident/owners was a false and dishonest subterfuge to mask the City's true purpose to get rid of the eyesore known as the Oak Hill Mobile Home Park. After they are forcibly evicted from their homes, the Park resident/owners will be on their own. There is nothing in the record to indicate in any way that the City Council cares what becomes of any of the mobile home resident/owners.

The true outrage in this case is that the City has pursued a dishonest strategy for the forcible eviction of the resident/owners from their 30 homes—***WITHOUT AFFORDING ANY OF THE RESIDENT/OWNERS BASIC DUE PROCESS NOTICE AND OPPORTUNITY TO DEFEND THEIR HOMES. The City has truly treated the Park resident/owners as if they were invisible—as if they did not even exist!***

No one can argue that the goals of improving the appearance of a city and promoting the highest and best use of property in a city are not reasonable. Iowa has a whole body of statutes enacted to grant cities urban renewal powers to do just those things. However, constitutionally a city cannot take people's property for urban renewal purposes without first paying just compensation.

The City Council in this case possibly could have approached its gentrification goal by acquiring the Park under its urban renewal powers and paying just compensation. The City Council obviously rejected this legal alternative, because it was too expensive. In the City's Resistance to Motion for Injunction Without Bond, filed in the District Court on June 22, 2016, the City Attorney stated: ***"City staff roughly estimates that the City's cost to remove the mobile home park from the property, including removal of trailers and other structures, would be at least $80,000-$100,000."*** If the City Council had elected to use urban renewal, these huge costs would have been the City's responsibility. By improperly asserting safety concerns as justification for closing the Park, the City Council is wrongfully attempting to pass the tremendous costs on to the Park owner, Mark Ogden.

Where in the world does the City think Mark Ogden can find $100,000? Mr. Ogden is a person of very limited means. Mr. Ogden cannot afford even to pay attorney fees for his legal representation in this case. Mr. Ogden originally was represented by attorney Daniel L. Manning, Sr. of the Des Moines law firm of Lillis O'Malley Olson Manning Pose Templeman LLP. [App. 12] On October 22, 2015, attorney Manning filed an Application seeking to withdraw as counsel for Mr. Ogden. On December 2, 2015, the District Court filed its Order permitting Mr. Manning to withdraw

as counsel. On December 17, 2015, the District Court filed a Trial Scheduling Order prohibiting addition of any new parties, prohibiting any additional discovery, and setting a trial date of March 24, 2016. On February 5, 2016, James E. Nervig filed his Appearance after being retained by Mr. Ogden as his new counsel. On June 10, 2016, a Petition was filed in Polk County District Court in Case No. LACL135370, entitled *Lillis O'Malley Olson Manning Pose Templeman LLP v. Mark Ogden*, in which Mr. Ogden's former law firm seeks a judgment in excess of $17,786.26 based on invoiced legal fees that have not been paid by Mr. Ogden. ***These facts are presented to the Supreme Court to show that the City's actions against Mark Ogden have already destroyed him financially.***

This is a truly extraordinary case with extraordinary constitutional issues. The Appellant respectfully asks the Supreme Court to retain this case. Justice compels retention.

REPLY POINT 2
THE CITY OF DES MOINES HAS FAILED TO PROVE THAT THE OAK HILL MOBILE HOME PARK HAS LOST ITS NONCONFORMING USE RIGHTS BY VIRTUE OF HAVING BECOME A NUISANCE.

In section I(A) of its Appellee's Brief, the City argued that "Ogden did not preserve the argument that the City has engaged in an unconstitutional taking." The City Attorney misrepresented Mr. Ogden's

argument. Upon the conclusion of the trial on March 24, 2016, the District Court asked counsel for both parties to submit proposed findings of fact, conclusions of law and rulings. On March 28, 2016, counsel for Mark Ogden submitted a document entitled "Ruling" to the Court by email. A copy of the proposed Ruling is contained in the Appendix. [App. 253] In Mr. Ogden's proposed Ruling, the following statements are made regarding the law of nonconforming use rights:

> **1. Statement of the Issue.**
>
> This action concerns the vested legal right of Mark Ogden and the resident-owners of all of the mobile homes within the Mobile Home Park to continue to use the premises as a mobile home park in the same manner as the premises continuously have been used since 1939. Current City zoning district regulations would not permit a new mobile home park on the premises. Since the use of the premises as a mobile home park was legal before the prohibitive later zoning regulations became effective, the right to continue the use is based on the doctrine of "nonconforming use."
>
> **2. The Law of Nonconforming Use Rights.**
>
> Nonconforming use rights developed to assure that property owners are not subject to unconstitutional takings of private property rights without due process and just compensation. Municipal restrictions may not deprive the owner of substantial use of property without due process. *See* U.S. Const. Fifth Amend., section 1; Iowa Const. Art. I, section 18. Under the Fifth Amendment to the U.S. Constitution, private property may not be taken for public use, without just compensation. The "just compensation" clause is made applicable to the states by the Fourteenth Amendment. *Iowa*

Coal Mining Co. v. Monroe County, 555 N.W.2d 418 (Iowa 1996).

A constitutional "taking" is not limited to appropriation of fee title to private property; the right to just compensation also may be triggered by a "taking" that deprives a property owner of the substantial use of his property. *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 431 (Iowa 1996). For example, an owner could be making productive use of a parcel, prior to city enactment of a regulation that prohibits all productive use. The enactment of the new regulation would deprive the owner of use of his property, so as to entitle him to just compensation. "The term 'inverse condemnation' is a generic description of the manner in which a landowner recovers just compensation for a taking of the owner's property when condemnation proceedings have not been instituted." *Id.*

A city may avoid an inverse condemnation claim by providing for an administrative remedy. *See id.* One such administrative remedy can be afforded under an ordinance granting a property owner the vested right to continue a so-called "nonconforming use" that does not satisfy current zoning regulations.

"A nonconforming use is a use which not only does not conform to the general regulation or restriction governing a zoned area but which lawfully existed at the time that the regulation or restriction went into effect and has continued to exist without legal abandonment since that time." *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d at 430.

"The prior use of the property essentially establishes a vested right to continue the use after the ordinance takes effect." *City of Okoboji v. Okoboji Barz, Inc.*, 746 N.W.2d 56, 60 (Iowa 2008). An established nonconforming use runs with the land, and a change in ownership will not destroy the right to continue the use. *City of Clear Lake v. Kramer*, 789 N.W.2d 165 (Table), 2010 WL 3157759 (Iowa Ct. App. 2010).

The foregoing cited authorities establish that use of the Oak Hill Mobile Home Park has the vested constitutional right to continue its use as a mobile home park by virtue of its existence as a legal nonconforming use since 1955—a right confirmed by the City itself in 1955 by its issuance of a certificate of occupancy. The City Attorney apparently misunderstood that Mark Ogden is not seeking "just compensation" on the theory that the City has "taken" his property. Mark Ogden does not want the City to take his property and pay him just compensation. Mark Ogden only wants the City to leave him alone and allow him to operate a mobile home park that quietly has been in existence for the past 77 years.

In *Jewell Junction v. Cunningham*, 439 N.W.2d 183, 185 (Iowa 1989), the Supreme Court determined that "resolution of the question of nonconforming use turns on how tightly the [property owners] must be held to the original use of their property. . . . once the preexisting use has been established by a preponderance of the evidence, the burden is on the city to prove a violation of the ordinance by exceeding the established nonconforming use. [citations omitted]."

Mark Ogden is arguing that the only way that the City could carry its burden to establish the legal right to terminate Mr. Ogden's vested nonconforming use, ***without paying just compensation***, is if the City could

prove that the vested nonconforming use of the premises as a mobile home park had so substantially changed over time as to become a nuisance. This constitutional principle is well established. In E*aster Lake Estates, Inc. v. Polk County*, 444 N.W.2d 72, 76 (Iowa 1989), the Supreme Court clearly reaffirmed this principle by stating: ***"Generally, the use of police power to abate a nuisance will not give rise to a compensable taking because a person has no vested property right in a nuisance."*** [emphasis added] The fundamental contention by Mark Ogden in this case is that the City has failed to carry its burden to prove that use of the Oak Hill Mobile Home Park has so changed over time after the issuance of the 1955 certificate of occupancy as to have become a nuisance.

In section I(C)(1) of its Appellee's Brief, the City argued that "the residents of Oak Hill are at increased danger from fire." In support of this conclusion, the City offered the testimony of Fire Marshal Jonathan Lund "that buildings face greater danger from fires if closer together rather than further apart." The City stated that Oak Hill mobile homes are sometimes less than twelve feet apart, that some are three feet apart, that the Park contains "fences, container gardens, bicycles, children's toys, grills, large refuse items (including . . . a truckload of tires). And metal and plastic bins." The City concluded that "if one mobile home were to start on fire, it would

be easy for that fire to travel to many other trailers." The City stated: "It would also be difficult for firefighters to respond to a fire or other emergency at Oak Hill because of the narrow driveway." The City concluded: "The City cannot take from Mr. Ogden a right he no longer had. Because Oak Hill has become a public safety hazard or because it has expanded beyond its lawful conforming use . . . Mr. Ogden no longer has a legal right to continue operating a mobile home park."

The City's argument fails as to the City's contentions that the Park has "***become*** a public safety hazard," that the Park has "***expanded*** beyond its lawful conforming use," and that the Park residents have been exposed to "***increased***" danger from fire. All of the City's contentions allege that conditions in the Park have somehow changed over time since the City granted the 1955 occupancy permit legally establishing the nonconforming use status of the Park.

The City did not explain when the fire danger "increased." Mobile homes have been located at the Park for 77 years. The City has issued a 1955 certificate of occupancy confirming that the Park was operating then as a legal nonconforming use. [App. 87] The City's own Exhibit 1 is a Polk County Assessor's informational printout stating that there were 39 mobile home pads in place in 1939. [App. 287] Mobile home pads are permanent

structures. They are fixtures on the land. They do not move. No evidence was presented at trial to refute the fact that the same 39 pads were in place when the certificate of occupancy was issued in 1955. Mark Ogden testified that there are only 30 mobile homes currently in place in the Park. [App. 216 - 218] No evidence was presented at trial to dispute the fact that all of the 30 existing mobile homes in the Park are located on pads in their original locations. Aerial photos from 1963 and 2015 were admitted as Exhibits 11 and 3. [App. 88, 25] Zoning official Su Ann Donovan admitted in her testimony that the layout of the Park has not changed significantly from 1963 to 2015 and that the driveway through the Park is in the same location. [App. 150 – 151, 196] Ms. Donovan testified that the Park was configured in 1963 for approximately 33 to 39 mobile homes. [App. 196]

Based on all of the foregoing, undisputed evidence, there is nothing in the record to support the City's contention that there have been substantial changes in the use of the Park since 1955 that would have "***increased***" the danger from fire. If there had been a substantial increase in the danger from fire, there certainly would have been at least once reported fire disaster in the Park since 1955. The City did not introduce any evidence into the record that there have been any fire disasters during the entire time period since 1955. If there had been a substantial increase in the danger from fire, there

certainly would have been at least one City lawsuit or other enforcement action brought to abate a safety hazard in the Park during the entire time period since 1955. The City did not introduce any evidence into the record that there have been any City lawsuits or other enforcement actions brought to abate a safety hazard during the entire time period since 1955. Based on all of the evidence in the record, there is absolutely no reasonable basis for concluding that the Oak Hill Mobile Home Park is a nuisance justifying its abatement by its complete closure.

REPLY POINT 3
CITY OF DES MOINES, IOWA v. MARK OGDEN, EQCE078654

In their respective Appellant's Brief and Amici Curiae Brief, Mr. Ogden and the Amici Curiae have stressed that the City had the burden of proving that the Oak Hill Mobile Home Park had so changed since 1955 as to have become a nuisance, and that the City failed to present any evidence to the trial court that there had been any safety lawsuits or enforcement actions against the Park by City during the entire period from 1955 to the present. In section III(C) of its Appellee's Brief, the City has advised—for the first time in this case—that, in fact, there actually was one—and only one—such action by the City. The City Attorney never mentioned this single action to the District Court, and nothing in the trial record identifies

such an action. It is noteworthy that the City Attorney has persistently objected to references in the Briefs of the Appellant and Amici Curiae to matters not in the trial record, but when it is in his own interests, the City Attorney simply disregards his own principles.

The single action belatedly referenced by the City Attorney is a Polk County District Court lawsuit, entitled *City of Des Moines, Iowa vs. Mark Ogden*, Case No. EQCE078654, that was commenced by the filing of a Petition on July 23, 2015. In the City's Petition, the City Attorney alleged that there was a single identified mobile home on Lot 12 within the Oak Hill Mobile Home Park that had been inspected by a City inspector and found to be unsafe and unfit for human habitation. In paragraph 2 of the City's Petition, the City Attorney erroneously alleged that Mark Ogden was "the titleholder of record" of the subject mobile home. On September 16, 2016, Mark Ogden filed an Answer informing the court that the subject mobile home was not owned by Mr. Ogden, but by a person named Angel Rodriguez. In his Answer, Mr. Ogden provided the Court with a certificate of title proving that Angel Rodriguez was the titleholder of the mobile home. Once the City Attorney was put on notice that the legal owner of the mobile home was someone other than Mark Ogden, the City Attorney had a legal responsibility to dismiss the lawsuit against Mr. Ogden. The City Attorney

refused to honor his obligation to dismiss the lawsuit, despite multiple requests by Mr. Ogden's legal counsel.

The subject mobile home later was removed. However, the City Attorney still refused to dismiss the lawsuit, because he contended that Mr. Ogden was liable for the City's enforcement costs. On July 7, 2016, the case came on for trial before the Honorable Judge David May. On September 2, 2016, Judge May filed his Final Order dismissed the City's Petition against Mr. Ogden. Judge May held that "Ogden was not the 'owner' of the mobile home. Therefore, Ogden cannot be liable under section 60-306 (i.e., the section of the Des Moines City Code imposing liability upon the owner of a residential structure "declared to be a public nuisance and unfit for human habitation or use").

The circumstances surrounding the Rodriguez mobile home in Case No. EQCE078654 provide strong support for the arguments made by Mark Ogden and the Amici Curiae in their respective Briefs. The City Attorney belatedly has mentioned the Rodriguez case to try to correct his previous mistake in failing to provide the District Court with evidence that the City had instituted ANY safety enforcement legal action against the Oak Hill Mobile Home Park for the past 77 years. It is extremely significant that his feeble rebuttal is that there in fact was ONE such enforcement lawsuit—the

Rodriguez case. However, the circumstances of the Rodriguez case do nothing to support the City's position in the case at hand. To the contrary, the Rodriguez case is extremely harmful to the City's position.

In their respective Briefs, the Appellant and the Amici Curiae contend that when particular unsafe circumstances come to exist within a mobile home park, or any other residential community, the appropriate enforcement mechanism is for a city to bring an action for abatement of a nuisance. The action should focus on specifically identifying the nuisance condition for which abatement is sought. That is exactly what the City did in filing its Petition in the Rodriguez. The City identified a single mobile home as being an unsafe nuisance. The filing of the action resulted in the removal of the Rodriguez mobile home and the abatement of the unsafe nuisance. While the legal basis for the nuisance lawsuit was well founded, the City Attorney wrongfully brought the action against the wrong person. The City Attorney wrongfully identified Mark Ogden as owner of the mobile home, when the facts were undisputed that the mobile home was owned by a different person. The City Attorney's mistake appears to have been an honest mistake resulting from simple ignorance of the law. The City Attorney was unaware that title to a mobile home in Iowa is conferred by a paper certificate of title,

and that the certificate of title naming Rodriguez was the legal confirmation of Rodriguez's ownership.

It is extremely important to compare the two very different approaches taken by the City in the case at hand and in the Rodriguez case. In the case at hand, the City Attorney has not focused on abatement of particular alleged unsafe nuisance conditions within the Park, as he did in the Rodriguez case. Instead, in the case at hand, the City Attorney has stated that, because there are particular alleged unsafe nuisance conditions, the remedy is not to abate those particular unsafe nuisance conditions—but to close down the entire Park. Such an extreme result is not supported by any reported appellate decisions—and such a result would be an outrageous miscarriage of justice.

Judge May's Ruling in the Rodriguez case also is very instructive as to the nature of the interests of the landowner Mark Ogden and the mobile home resident/owners within the Park. Mr. Ogden is the owner of the land upon which the mobile homes are located, but he has no ownership interest in the individual mobile homes. The individual mobile homes are legally owned by their residents, who lease space from Mr. Ogden for location of the mobile homes in the Park. As Judge May ruled, if the City has any safety issues with respect to the mobile homes, the City's remedy is to bring

an abatement lawsuit against the offending mobile home owners. The mobile home owners are the legal parties in interest. Judge May's holding is completely at odds with the City Attorney's persistent argument in the case at hand that the mobile home resident/owners have no interest in the issues of the case. Of course they do.

REPLY POINT 4
THE CITY HAS KNOWINGLY MISREPRESENTED THAT THE CITY HAS TAKEN PAST ACTIONS TO ADDRESS NUISANCES IN THE PARK.

In section III(C) of its Appellee's Brief, the City asserted: "The property has lost its right to continue as a legal non-conforming use. The repeated need for the City to address, junk and debris, and zoning violations at 3140 Indianola Avenue make Mr. Ogden 'a landlord who neglects or abandons urban properties;' the definition of a slumlord. . . . . Mr. Ogden and his predecessors have exploited residents by taking their money so that they could live in a mobile home park that is unsafe and in violation of City ordinances."

This statement by the City is a knowingly false misstatement of fact. The City never presented the District Court with any evidence that there had been ANY—***NOT A SINGLE ONE***—lawsuit or other legal enforcement proceeding against the Oak Hill Mobile Home Park during the entire 77-year period when mobile homes have been located on the premises.

Now, after the conclusion of the trial, the City mentioned in its Appellee's Brief that there really was one case, the Rodriguez case discussed above. However, as explained above, the City did not bring that case properly against Mr. Ogden, and the case was dismissed by the District Court.

The City also asserted in its Appellee's Brief that "the pictures in the City's exhibits 13 – 17 all represent instances in which the City issued junk and debris cleanup notices." Exhibits 13 – 17 are nothing more than photographs of mobile home in the Park. [App. 89 – 94] The City Attorney presented no evidence to the District Court that the City had issued any "junk and debris cleanup notices." Certainly, none of the exhibits entered into evidence at the trial relate in any way to cleanup notices. Once again, the City Attorney is seeking to introduce evidence before the Supreme Court that is not part of the trial court record. Once again, an allegation that the City may have issued some "junk and debris cleanup notices," even if true, is a pathetic excuse for contending that the entire Park is so dangerous as to have become a nuisance warranting its destruction. The proper remedy for problems with particular junk and debris would be a simple court order to clean up the particular junk and debris.

The City Council and the City Attorney have acted in bad faith in making their false allegations to damage the character and integrity of Mr. Ogden. Mr. Ogden is a very good man, and he has done very well for many years in providing a Park that has become a home to many, many impoverished people.

Particularly outrageous is the City's slanderous assertion that Mr. Ogden is a "slumlord," who has "exploited residents by taking their money." Again, the City Council and the City Attorney are knowingly attempting to mislead the Supreme Court into believing that the City truly cares about the Park residents. The City's ruthless strategy thoughout this proceeding has been to disenfranchise the residents and take away their rights without notice or hearing .

Before branding Mr. Ogden a "slumlord," it would have been incumbent upon the City Council and the City Attorney to at least talk with some of the Park residents to obtain their opinions as to how they were being treated by Mr. Ogden. Also, the City Attorney should have welcomed testimony at trial by a Park resident, rather then strongly objecting to any participation in the case by any of the residents.

After being ignored in the proceedings before the District Court, eight of the Park resident/owners now have had the opportunity to obtain legal

counsel and file their Amici Curiae Brief. If Mark Ogden had done anything to exploit or harm any of these resident/owners, their Brief would have mentioned such conduct. Their Brief mentioned no improper conduct on the part of Mark Ogden.

The trial record establishes that Mark Ogden has been very cooperative with the City during the entire time period he has owned and managed the Park. By taking the extreme action of slandering Mark Ogden by branding him a "slumlord," the City Attorney has revealed the personal feelings of hatred held by the City Attorney and the City Council toward Mr. Ogden. Mr. Ogden is hated by the City Council and the City Attorney for no other reason than because he has stood up to them and refused to close a mobile home park that has been his lifetime commitment.

REPLY POINT 5
THE CITY HAS MISTAKENLY ARGUED THAT MARK OGDEN RELIES ON THE EXCLUDED TESTIMONY OF PARK RESIDENT/OWNER GLORIA LAND.

In section II(C) of its Appellee's Brief, the City asserted that Mark Ogden is relying on the excluded testimony of Park resident/owner Gloria Lang. The City appears to believe that Mr. Ogden was under the burden to call Park resident/owners to testify regarding the issues before the District Court. Mr. Ogden did not have the burden, the City did.

The only way that the City can prevail in this case is by carrying its burden to prove that a nuisance exists at the Oak Hill Mobile Home Park that is of such a magnitude of unsafe conditions as to justify nothing less than the complete closure of the Park as a mobile home residential community. This is a very heavy burden considering that the existence of a residential community of 30 homes is at stake.

The only persons that would be impacted by such alleged unsafe conditions would be the resident/owners of the 30 mobile homes in the Park. To carry its heavy burden to prove that the Park was a nuisance, it was incumbent upon the City to call resident/owners in the Park as witnesses. The fact that the City could not produce a single resident/owner to testify in support of the City's nuisance argument establishes that the City failed in its burden to prove the existence of a nuisance.

In summary, Mark Ogden did not need to make his case by calling Park resident/owners as witnesses, but the City cannot prevail in this case because the City Attorney DID NOT call any resident/owners as witnesses.

REPLY POINT 6
THE BRIEF OF THE AMICI CURIAE SHOULD BE CONSIDERED BY THE SUPREME COURT IN ITS ENTIRETY.

In section III(A) of its Appellee's Brief, the City argued that "Amici's brief relies on several sources of information outside the record. Aside from

the few citations to the record, the cases, statutes, and rules cited by Amici, all of the Other Authorities cited by Amici are factual sources not included in the record before the district court. The Court should decline to consider them." In the interest of justice, the Supreme Court is compelled to consider all of the matters set forth in the Amici Curiae Brief.

This case dramatically illustrates the disastrous consequences that can befall defenseless, impoverished members of our society when entitled and powerful people are able to abuse due process to achieve unjust ends. The resident/owners of the Oak Hill Mobile Home Park have a very powerful story to tell, and the Supreme Court should not turn a deaf ear.

The stakes in this case are extremely high. At stake is the potential destruction of an entire residential community of 30 mobile homes. The resident/owners of those mobile homes were never afforded the right to defend and protect their rights before the District Court. In the interest of justice, the Supreme Court now should show them that they are not invisible in the eyes of the law.

CONCLUSION

The matters set forth in this Reply Brief are intended to supplement the matters previously set forth in the Appellant's main Brief. All of the

matters previously set forth in the Appellant's main Brief are hereby reconfirmed.

The Supreme Court should Reverse the Ruling of the District Court and declare that the current use of the premises as a mobile home park is a legal nonconforming use and has been since the issuance of the Certificate of Occupancy on March 7, 1955, and that the City is barred from obtaining an injunctive order to terminate the use.

Alternatively, even if the Supreme Court determines that the March 7, 1955 Certificate of Occupancy did not conclusively establish the vested right to continue the use of the premises as a mobile home park as a legal nonconforming use, the Supreme Court should declare that the City is barred by equitable estoppel from obtaining an injunctive order to terminate the use 61 years after the issuance of the Certificate of Occupancy.

Respectfully submitted,

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CERTIFICATE OF COSTS

I hereby certify that the cost of printing the foregoing Appellant's Reply Brief was $ 28.00 (exclusive of sales tax, postage and delivery).

/s/ James E. Nervig

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/s/ James E. Nervig

CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this Brief contains 6,088 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because the Brief has been prepared in a proportionally spaced typeface using Times New Roman font and utilizing the 2007 edition of Microsoft Word in 14 point font plain style.

/s/ James E. Nervig